

May 19, 2016

Mr. Mike Honeycutt
Executive Officer
Montana Board of Livestock
301 N. Roberts Street
Helena, MT 59601

Re: Request for Attorney General Opinion
Wild Bison Management

Dear Mr. Honeycutt:

You have requested an Attorney General Opinion regarding the management of wild buffalo, which I have rephrased:

What are the respective responsibilities of the Department of Livestock, the Department of Fish, Wildlife & Parks, and the Governor concerning the management of wild buffalo under Mont. Code Ann. §§ 81-2-120, 87-1-216, and 87-2-730?

Because the analysis involves reference to unambiguous statutes, an Attorney General Opinion is not warranted under Mont. Code Ann. § 2-15-501(7). We have determined that your question can be answered with a letter of advice, which is not a formal Attorney General Opinion and should not be presented as such.

The Department of Livestock (DOL) has authority over wild bison requiring disease control, meaning “publicly owned wild buffalo or wild bison from a herd that is infected with a dangerous disease . . . and the disease may spread to persons or livestock” or wild buffalo or wild bison whenever their presence “may jeopardize Montana’s compliance with other state-administered or federally administered livestock disease control programs.” Mont. Code Ann. § 81-2-120(1). DOL can act regarding these bison under a

plan approved by the Governor. Mont. Code Ann. § 81-2-120(1). This statute does not grant DOL authority to manage wild bison that do not require disease control.

Rather, that authority rests with the Department of Fish, Wildlife and Parks (FWP). Mont. Code Ann. § 87-1-216(2). FWP shall cooperate with DOL in managing wild bison that are infected, also under a plan approved by the Governor. *Id.* at (2)(c). This subsection reiterates that DOL is responsible for regulating contagious bison. *Id.* FWP can authorize public hunting of bison, after agreement and authorization by DOL. *Id.* If DOL designates bison as a “species in need of disease control” under Mont. Code Ann. § 81-2-120, FWP may issue special licenses for bison hunting when authorized by DOL. Mont. Code Ann. § 87-2-730(1) and (2). FWP is required to adopt rules regarding the hunt, but again this must be in cooperation with DOL. Mont. Code Ann. § 87-2-730(3).

Therefore, each Department has a distinct role in the management of wild bison, with, generally, DOL responsible for managing bison that require disease control and FWP responsible for managing bison that do not require disease control. On bison management issues, the two departments must cooperate, and any management conflicts are resolved by the Governor, under Mont. Code Ann. § 2-15-103, which provides:

2-15-103. Policymaking authority and administrative powers of governor. In accordance with Article VI, section 4, of the Montana constitution, the governor is the chief executive officer of the state. Subject to the constitution and law of this state, the governor shall formulate and administer the policies of the executive branch of state government. In the execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units, other than the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive branch of state government, except for conflicts arising in the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final.

Under these statutes the Governor does not “determine each agency’s legal authority to manage diseased wild buffalo or bison” as stated in your request. Rather, the Legislature determined each Department’s legal authority when it enacted the statutes.

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Again, this letter is a letter of advice, and not a formal Opinion of the Attorney General.

Very truly yours,

ALAN L. JOSCELYN

Chief Deputy Attorney General

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